

§ 37.92(b)(2) shows evidence of decreased lung function to the extent specified in § 37.92(b)(3).

(c) *Notification.* NIOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, NIOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator must not state the medical reason for the examination or that it is the third examination in the series. If the miner is notified by NIOSH that the third mandatory examination is due and the operator is not so notified, availability of the radiographic examination under the NIOSH-approved operator's plan will constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) *Availability of chest radiographs.* The opportunity for chest radiographs to be made available by an operator for purposes of this subpart must be provided in accordance with a plan that has been submitted and approved in accordance with this subpart.

[79 FR 45118, Aug. 4, 2014]

§ 37.4 Chest radiographic examinations conducted by the Secretary.

(a) The Secretary will give chest radiographs or make arrangements with an appropriate person, agency, or institution to give the chest radiographs and with A or B Readers to interpret the radiographs required under this subpart in the locality where the miner resides, at the mine, or at a medical facility easily accessible to a mining community or mining communities, under the following circumstances:

(1) Where, in the judgment of the Secretary, due to the lack of adequate medical or other necessary facilities or personnel at the mine or in the locality where the miner resides, the required radiographic examination cannot be given.

(2) Where the operator has not submitted an approvable plan.

(3) Where, after commencement of an operator's program pursuant to an approved plan and after notice to the operator of his failure to follow the approved plan and, after allowing 15 calendar days to bring the program into compliance, the Secretary determines and notifies the operator in writing that the operator's program still fails to comply with the approved plan.

(b) The operator of the mine shall reimburse the Secretary or other person, agency, or institution as the Secretary may direct, for the cost of conducting each examination made in accordance with this section.

(c) All examinations given or arranged by the Secretary will comply with the time requirements of § 37.3. Whenever the Secretary gives or arranges for the examinations of miners at a time, a written notice of the arrangements will be sent to the operator who shall post the notice on the mine bulletin board.

(d) Operators of mines selected by NIOSH to participate in the National Study of Coal Workers' Pneumoconiosis (an epidemiological study of respiratory diseases in coal miners) and who agree to cooperate will have all their miners afforded the opportunity to have a chest radiograph required hereunder at no cost to the operator. For future examinations and for mandatory examinations each participating operator must submit an approvable plan.

[43 FR 33715, Aug. 1, 1978, as amended at 77 FR 56728, Sept. 13, 2012. Redesignated and amended at 79 FR 45119, Aug. 4, 2014]

§ 37.10 Standards incorporated by reference.

(a) Certain material is incorporated by reference into this subpart, Subpart—Chest Radiographic Examinations, with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NIOSH must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at NIOSH, Division of Respiratory Disease